[Cite as *In re Talbert,* 2009-Ohio-4237.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN RE:	:	JUDGES:
	:	William B. Hoffman, P.J.
ERIKA TALBERT	:	John W. Wise, J.
	:	Julie A. Edwards, J.
	:	
	:	Case No. CT2008-0031
	:	
	:	
	:	O P I N I O N

CHARACTER OF PROCEEDING:	Civil Appeal from Muskingum County Court of Common Pleas, Juvenile Division, Case No. 20230085
JUDGMENT:	Dismissed
DATE OF JUDGMENT ENTRY:	August 17, 2009
APPEARANCES:	
For Plaintiff-Appellant Shawn A. O'Neal 15708 McConnelsville Road Caldwell, Ohio 43724	For Defendant-Appellee Muskingum County Job & Family Services - Child Support Division Gregory Starcher, Esq. 1830 East Pike Zanesville, Ohio 43701 Tuesday M. Perry 541 Eppley Avenue Zansville, Ohio 43701

Edwards, J.

{¶1} Plaintiff-appellant, Shawn O'Neal, appeals from the May 14, 2008, Judgment Entry of the Muskingum County Court of Common Pleas, Juvenile Division. Defendant-appellee is Muskingum County Job and Family Services, Child Support Division.

STATEMENT OF THE FACTS AND CASE

{¶2} Erika Talbert, who was born on June 28, 1998, is the biological child of appellee Tuesday Perry and appellant Shawn O'Neal. On July 25, 2002, a complaint was filed in the Muskingum County Court of Common Pleas, Juvenile Division, alleging that Erika was a neglected and/or dependent child. Appellant was served by certified mail with a copy of the complaint on August 2, 2002.

{¶3} An adjudicatory hearing was held on September 19, 2002. At the hearing, appellant appeared with his court-appointed counsel. Pursuant to an order filed on September 23, 2002, the trial court found that Erika was a dependent child. Via an interim order filed on the same day, Erika was placed in the temporary custody of appellant with protective supervision by Muskingum County Children Services.

{¶4} Subsequently, a dispositional hearing was held on March 6, 2003, Appellant was present at the hearing with counsel. Pursuant to an order filed on March 10, 2003, Erika was placed in the temporary custody of Muskingum County Children Services which placed her with her relatives.

{¶5} On May 9, 2003, Muskingum County Children Services filed a Motion to Terminate Temporary Custody and to Grant Legal Custody. The agency, in its motion, sought to terminate its temporary custody of Erika and grant legal custody of Erika to

her relatives. The agency noted that both appellant and appellee were incarcerated. A hearing was scheduled for June 23, 2003. The motion and notice of hearing were sent by certified mail to appellant at Noble Correctional Institution. On June 12, 2003, a Corrections Officer signed for the certified mail.

{¶6} On June 23, 2003, the trial court terminated the agency's temporary custody of Erika and ordered that Erika be placed in the legal custody of her maternal aunt and uncle.

{¶7} Thereafter, on October 31, 2006, appellee filed a pro se Agreed Motion for Change of Residential Parent and Legal Custodian, asking that custody of Erika be transferred to her. The motion was signed by appellee and by Erika's maternal aunt and uncle. Appellee, in her motion, also requested child support. A hearing was scheduled for December 6, 2006. On or about November 7, 2006, a notice of the hearing was sent to appellant by regular mail with a certificate of mailing.

{¶8} Via an Entry filed on February 6, 2007, the Agreed Motion was dismissed by the trial court.

{¶9} On April 3, 2007, appellee again filed a pro se Agreed Motion for Change of Residential Parent and Legal Custodian, asking that custody of Erika be transferred to her and requesting child support. The motion was signed by apppellee and by Erika's maternal aunt and uncle. A hearing was scheduled for August 27, 2007. On July 23, 2007, a notice of the hearing was sent to appellant via regular mail with a certificate of mailing.

{¶10} As memorialized in an order filed on August 27, 2007, the trial court granted legal custody of Erika to appellee. Pursuant to a notice filed on January 10,

2008, the trial court scheduled a hearing on child support and health care coverage for February 13, 2008, and advised appellant to appear at such hearing, and to bring income and medical insurance information. The notice was served on appellant via regular mail.

{¶11} Subsequently, appellant, in a letter to the trial court dated February 4, 2008 and filed on February 6, 2008, stated, in relevant part, as follows:

{¶12} "Please forward me a copy of the complaint, docket sheet, declaration under uniform child custody jurisdiction and enforcement act (UCCJEA), and all other motions and supporting documents that was filed in the Common Pleas Court of Muskingum County, Ohio Juvenile Division to commence the action scheduled for hearing on February 13, 2008, being a hearing for an order for child support and health care coverage in the above captioned case."

{¶13} A hearing before a Magistrate to determine child support was held on February 13, 2008. Appellant did not appear at the hearing, nor did counsel on his behalf. As memorialized in a Magistrate's Decision filed on May 14, 2008, the Magistrate recommended that appellant be ordered to pay child support in the amount of $212.42 per month, plus processing charge, for Erika. The trial court filed a Judgment Entry approving and adopting the Magistrate's Decision on the same day.

{¶14} On May 27, 2008, appellant filed a "Motion to Set Aside [the] Magistrate's Order and Objection to Magistrate [sic] Factfinding and Decision and Request for Findings of Fact and Conclusions of Law."

{¶15} Appellant filed his notice of appeal on June 16, 2008, raising the following assignment of error:

{¶16} "THE TRIAL COURT ERRED RENDERING THE FINAL JUDGMENT IN ADOPTING THE MAGISTRATES [SIC] DECISION ESTABLISHING CHILD SUPPORT OBLIGATION, SUA SPONTE, WHEN THERE WAS INEFFECTIVE SERVICE OF SUMMONS AND COMPLAINT, AND APPELLANT DID NOT RECEIVE ADEQUATE NOTICE OF THE COMPLAINT AND AN OPPORTUNITY TO PRESENT EVIDENCE IN OPPOSITION."

{¶17} However, before reaching the merits of appellant's assignment of error, this Court must determine whether it has jurisdiction to hear this appeal. Section 3(B)(2), Article IV of the Ohio Constitution limits this Court's appellate jurisdiction to the review of final judgments of lower courts.

{¶18} In the case sub judice, both the Magistrate's Decision and the trial court's Judgment Entry approving and adopting the same were filed on the same day, May 14, 2008. Appellant then timely filed his objections to the Magistrate's Decision on May 27, 2008. See Juv.R. 40(D)(3)(b)(i).[1] However, before the trial court could address appellant's objections, appellant filed a Notice of Appeal.

{¶19} Juv.R. 40 (D)(4)(e)(i) states, in relevant part, as follows: ("i) *Judgment*. The court may enter a judgment either during the fourteen days permitted by Juv.R. 40(D)(3)(b)(i) for the filing of objections to a magistrate's decision or after the fourteen days have expired. If the court enters a judgment during the fourteen days permitted by Juv.R. 40(D)(3)(b)(i) for the filing of objections, the timely filing of objections to the magistrate's decision shall operate as an automatic stay of execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered." Emphasis added.

[1] Juv.R. 40 parallels Civ.R. 53.

{¶20} If there had been no timely, written objections to the Magistrate's Decision, the trial court's May 14, 2008, order would have been final and appealable at that time. However, the judgment was automatically stayed when appellant timely filed his written objections to the Magistrate's Decision. Pursuant to Juv.R. 40(D)(4)(e)(i), the trial court's May 14, 2008, Order was stayed and could not become final and appealable until the trial court explicitly disposed of the objections. See, for example, *Henley v. Henley* Wayne App. No. 04CA0059, 2005-Ohio-2568 in which the court held that because the trial court failed to rule on objections as required by analogous Civ. R. 53, there was no final, appealable order.

{¶21} Because the trial court has not yet ruled on appellant's objections and vacated, modified or adhered to its May 14, 2008, Order, we find that there is no final, appealable order.

{¶22} Accordingly, appellant's appeal is dismissed for lack of jurisdiction.

By: Edwards, J.

Hoffman, P.J. and

Wise, J. concur

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JUDGES

JAE/d0422

[Cite as *In re Talbert,* 2009-Ohio-4237.]

IN THE COURT OF APPEALS FOR MUSKINGUM COUNTY, OHIO

FIFTH APPELLATE DISTRICT

IN RE:	:	
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	:	JUDGMENT ENTRY
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	:	CASE NO. CT2008-0031

For the reasons stated in our accompanying Memorandum-Opinion on file, the appeal of the May 14, 2008, Judgment Entry of the Muskingum County Court of Common Pleas, Juvenile Division, is dismissed. Costs assessed to appellant.

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JUDGES